

INDEX TO APPENDIX

	PAGE
Appendix A:	
Opinion of the South Carolina Supreme Court	18
Appendix B:	
Order of the Court of Common Pleas	21
Appendix C:	
Ruling by the South Carolina Tax Commission	28
Appendix D:	
Constitution of the United States—The Commerce Clause	29
Appendix E:	
Constitution of the United States—Twenty-first Amendment	29
Appendix F:	
Public Law 86-272 (15 U. S. C. § 381)	30
Appendix G:	
South Carolina Code of Laws (1962) §§ 4-431 to 4-150, and as amended (the South Carolina Alcoholic Beverage Control Law)	32
Appendix H:	
South Carolina Code of Laws (1962) §§ 65-222, 65-602 and 65-606 (South Carolina Corporate Income and License Tax Provisions)	40
Appendix I:	
Notice of Appeal	42

APPENDIX A

THE STATE OF SOUTH CAROLINA IN THE SUPREME COURT

HEUBLEIN, INC., RESPONDENT,

v.

SOUTH CAROLINA TAX COMMISSION, APPELLANT

APPEAL FROM RICHLAND COUNTY

JOHN GRIMBALL, JUDGE

Opinion No. 19289

Filed September 22, 1971

REVERSED AND REMANDED

Attorney General Daniel R. McLeod and Assistant Attorneys General Joe L. Allen, Jr., and G. Lewis Argoe, Jr., all of Columbia, for appellant.

Carlisle Roberts and W. Croft Jennings, Jr., both of Roberts, Jennings & Thomas, of Columbia, for respondent.

LEWIS, A. J.: The question to be decided is whether respondent, Heublein, Inc., a Connecticut corporation, is liable to the State of South Carolina for income and license taxes assessed on the basis of Heublein's sales of alcoholic beverages in the State for the years 1964-68. The taxes were assessed by the appellant, South Carolina Tax Commission, paid under protest, and this action brought by Heublein to recover the taxes so paid. The lower court, in accord with Heublein's contention, held that Heublein was exempt from the payment of income and license taxes to South Carolina by virtue of the provisions of an Act of Congress, referred to as Public Law 86-272, the pertinent portion found in 15 U.S.C.A. Section 381.

Heublein's claim of exemption from taxation in South Carolina is based solely on the provisions of the foregoing Federal statute. Under its pertinent provisions, Congress enacted that no State shall have power to impose a net income tax on income derived within the State from interstate commerce, if the only business activity within the State was solicitation of orders for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State.

Under the powers reserved to the State by the Twenty-first Amendment, South Carolina has adopted its Alcoholic Beverage Control Act which prescribes the conditions under which alcoholic liquors may be imported into the State. Sections 4-131 to 4-150, 1962 Code of Laws. This statute requires that a producer of alcoholic beverages, before shipping liquor into South Carolina, must be registered with the State and that such producer appoint a "producer-representative" who shall be a resident of the State. It is further provided that shipment of alcoholic liquors into the State must be made to the "registered representative" of the producer who must accept delivery of the liquors within the geographical limits of South Carolina. Thereafter, the producer, through his representative, is authorized to make delivery of the alcoholic liquors from within South Carolina to a licensed wholesaler in the State. The "producer-representative" then certifies as to such delivery to the appellant Tax Commission.

All shipments of liquors into South Carolina for sale must be made to the shippers own representative within the State. Delivery is then made intrastate to the purchaser and such sale can be made in no other way. These statutory provisions preclude the sale of alcoholic liquors in South Carolina through interstate sales. Such constitutes a valid exercise of the State's powers under the Twenty-first Amendment. *State v. Kilgore*, 233 S. C. 6, 103 S. E. (2d) 321, citing *Ziffrin, Inc. v. Reeves*, 308 U. S. 132, 60 S. Ct. 163, 84 L. Ed. 128; *State Board of Equalization of California v. Young's Market Co.*, 299 U. S. 59, 57 S. Ct. 77, 81 L. Ed. 38.

Public Law 86-272 is applicable when delivery is made from a point outside the State and is inapplicable to sales and delivery consummated within the State.

It is conceded that the sales here involved were made in accordance with the State statutory requirements. They were, therefore, intrastate transactions and beyond the reach of Public Law 86-272.

The taxes here in question were properly assessed against Heublein. The judgment of the lower court is accordingly reversed and the cause remanded for entry of judgment in favor of the appellant, South Carolina Tax Commission.

MOSS, C.J., BUSSEY, BRAILSFORD, and LITTLE-JOHN, JJ., concur.

APPENDIX B

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND.

HEUBLEIN, INC., PLAINTIFF,

v.

SOUTH CAROLINA TAX COMMISSION, DEFENDANT

IN THE COURT OF COMMON PLEAS**ORDER**

At issue in this case is the South Carolina income and license tax liability of Heublein, Inc. for the years ending June 30, 1964 through 1968, inclusive. On or about January 2, 1969, the South Carolina Tax Commission ruled that Heublein, Inc. was responsible for these taxes. On February 1, 1969, Heublein paid these taxes, amounting to \$21,549.30, including interest, and brought timely suit to recover same. This case was heard by me on July 28, 1970, and thereafter briefs were submitted by both parties.

The defendant, the South Carolina Tax Commission, is a department of the government of the State of South Carolina. The plaintiff, Heublein, Inc., is a Connecticut corporation with its principal office in Hartford, Connecti-

cut. It manufactures alcoholic beverages which are sold throughout the United States, including South Carolina.

Heublein challenged the assessments on the ground that it was not liable for the taxes by virtue of Public Law 86-272¹.

In 1958, South Carolina enacted legislation, appearing as Article VII of the Alcoholic Beverage Control Act, §§ 4-131 to 4-150 of the South Carolina Code of Laws, 1962. This statute requires, among other things, that a person shipping alcoholic liquors into South Carolina shall register with the Commission as a "registered producer" and appoint a "producer-representative." Each time alcoholic liquors are shipped from without the State into South Carolina, they must be consigned to the registered producer in care of the producer-representative, who is required to deliver the goods to the purchaser after obtaining from the Commission permission for transfer. The shipper is required to mail to the Commission and the producer-representative a copy of the invoice covering the shipment. The producer-representative certifies as to delivery on the invoice copy sent to him and mails it to the Commission.

During the years in question, Heublein had one employee in South Carolina, a Mr. Billy J. Belch, who resided in Columbia and was a full-time employee. The Ben Arnold Company, Inc. of Columbia was the wholesaler who acted as the distributor of Heublein products in South Carolina. In South Carolina, Heublein has no office, no

¹ 15 U. S. C. § 381. *Imposition of net income tax—Minimum standards.*

(a) No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

(1) the solicitation of orders by such person, or his representative, in such State, for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and,

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

The act continues, but it is sufficient for the purpose of this Order to restrict ourselves to the above quoted portion.

warehouse, no telephone listing, no automobile, and no mailing address. Mr. Belch had an office in his home. Mr. Belch worked to further sales of Heublein's products in South Carolina in two ways. He would brief the salesmen of the Ben Arnold Company, to better inform them and to let them know something of the history of the Heublein products. He would also call upon Ben Arnold's retail accounts, tell them about Heublein products, and leave promotional materials with them. Mr. Belch had a sample allowance of about \$40 a month which he used for personal consumption and for entertainment. Occasionally, when on the road, Mr. Belch would pick up an order for Heublein's products from a retailer and, as an accommodation, deliver it to the Ben Arnold Company. Orders for Heublein products would be placed by the wholesaler, the Ben Arnold Company, with Heublein's home office in Hartford, Connecticut. When the order was accepted, an acknowledgment would be sent from Heublein to the Ben Arnold Company and Heublein would indicate when the order would be shipped. In Hartford, the goods ordered would then be prepared for shipment and South Carolina Alcoholic Beverage Stamps, supplied by the Ben Arnold Company, would be affixed. When shipped, these items moved by common carrier, F.O.B. Hartford, Connecticut, consigned to Heublein in care of Mr. Belch at the premises of the Ben Arnold Company. Ben Arnold made payment to Heublein for the orders by sending checks to a lock box in Atlanta, Georgia.

The statute and the regulations issued by the Tax Commission implementing the above act provide that upon arrival in South Carolina and upon completion of delivery to the producer-representative, the alcoholic beverages must either (1) be stored in a licensed warehouse of the registered producer or (2) be turned over to a wholesaler, pursuant to a Certificate of Transfer applied for by the producer-representative and approved by the Tax Commission. Heublein maintained no warehouse in South Carolina, hence all shipments into the state were turned over to the wholesaler in response to whose order the shipment was made. In practice, shipments of alcoholic beverages into South Carolina were delivered by the common car-

24 HEUBLEIN, INC., APPELLANT, v. S. C. TAX COMMISSION, APPELLEE

rier to Heublein's producer-representative at the wholesaler's address. Heublein, in compliance with the regulations prescribed and upon the forms prescribed, sent copies of the invoice and of the bill of lading to the Alcoholic Beverage Control Commission and to Mr. Belch. Upon arrival of the shipment by common carrier at the wholesaler's address, consigned to Heublein in care of Mr. Belch, Mr. Belch turned the shipment over to the wholesaler pursuant to the Certificate of Transfer obtained from the Alcoholic Beverage Control Commission in the manner previously indicated. Mr. Belch also furnished the Alcoholic Beverage Control Commission a copy of the invoice, with an endorsement thereon showing the date and place delivery was accepted. To facilitate the paper work involved in complying with the mechanics of the statute, the producer-representative was given desk space at the Ben Arnold Company, and for this desk space Heublein paid no rent.

Prior to the passage of the 1958 South Carolina legislation, Heublein did not engage in any of the activities specifically required by this legislation.

Heublein maintains that Public Law 86-272 is controlling. This act was passed as the reaction of Congress to the United States Supreme Court decision in *Northwestern States Portland Cement Co. v. Minnesota*, 358 U. S. 450, 79 S. Ct. 357 (1959). In this case, the Supreme Court was asked to decide whether certain activities of the taxpayers, corporations engaged in interstate commerce, were sufficient to provide a nexus with the state so that there might be an income tax levied on the corporations as a result of such activity. The Supreme Court, in answering this question, provided broad, general language to the effect that if the income tax was "not discriminatory and is properly apportioned to local activities within the taxing State," the state may subject the corporation to a state income tax.

This decision caused a great deal of consternation among the firms engaged in interstate commerce. Senator Harry Byrd of Virginia, Chairman of the Senate Finance Committee, in the Committee Report on what became Public Law 86-272, gave reasons for the concern. The Report

pointed out that there were (at that time) at least thirty-five states, the District of Columbia, and some eight cities which taxed business income, including earnings derived from interstate commerce, where there was some local business activity. Of all these taxing entities, no two had the same apportionment formula and all had widely varying definitions of the word "sale." It was apparent that unless some uniformity were introduced into the field of state taxation of interstate commerce, many businesses, particularly small or medium size ones, would be reluctant to expand their operations, and the implications for the national economy might well be unfortunate. In accordance with the need envisioned by the Senate Finance Committee, the Interstate Income Tax Law, Public Law 86-272, was enacted to provide uniformity and certainty in the area of state taxation of net income derived from interstate commerce. This act, which was approved September 14, 1959, provides that a state may not impose an income tax on income derived within that state from interstate commerce if the only business activity within the state does not exceed certain minimum standards. In essence, these minimum standards are (1) solicitation of orders within the state which (2) are sent outside the state for approval or rejection and, (3) if approved, are filled by shipment or delivery from a point outside the state. Heublein points out the Public Law 86-272 does not adopt the criterion of "sale," but rather the more specific criterion of sending of orders out of the state for acceptance, and shipment or delivery from a point outside the state.

Public Law 86-272 was held to be constitutional in *Smith, Kline & French Lab. v. State Tax Comm'n.*, 403 P. (2d), 374 (Ore. 1965); *State ex rel. CIBA Pharmaceutical Products, Inc. v. State Tax Comm'n.*, 382 S. W. (2d) 645 (Mo. 1964); and *International Shoe Co. v. Cocreham*, 246 La. 244, 164 So. (2d) 314 (1964), cert. denied 379 U. S. 902 (1964).

Heublein maintains that all of its activities within South Carolina come within the minimum activities allowable by Public Law 86-272. Heublein's activities fall into two categories: first, the activities which Heublein does of its own volition and, second, the activities which Heublein

only because it is required to do so by the South Carolina liquor laws. Setting aside for the moment these activities which Heublein does as a result of state compulsion, I am of the opinion and so find that all other activities of Heublein come within the minimum allowable by Public Law 86-272. These activities engaged in by Heublein are very similar to the activities which have been previously considered by courts and found to be acceptable as within the minimum permitted by Public Law 86-272. See, e.g., *Smith, Kline & French Lab. v. State Tax Comm'n.*, *supra*; and, *State ex rel. CIBA Pharmaceutical Products, Inc. v. State Tax Comm'n.*, *supra*.

I now turn to a consideration of whether the activities which Heublein was forced to do by the reason of the South Carolina Alcoholic Beverage Control Laws are sufficient to cause Heublein to come without the protection of Public Law 86-272. In this instance, Heublein is compelled by the State to follow a specific statutory procedure in making delivery from without the State to the wholesaler-purchaser within the State. The state may prescribe the delivery procedure, but compliance with such requirements cannot deprive Heublein of the effectiveness or applicability of the federal law on this subject. Such state-imposed minimum requirements therefore come within the minimum activities protected by Public Law 86-272. To hold otherwise would set the various taxing authorities free to devise all manner of restrictive regulations so that they might avoid the effect of Public Law 86-272.

Accordingly, I find and hold that Heublein did not exceed the minimum activities permitted by Public Law 86-272, and therefore Heublein is not liable for South Carolina income or license taxes.²

Heublein has also maintained, and I think correctly, that even if it were decided that because of its compliance with the South Carolina Alcoholic Beverage Control Laws Heublein has exceeded the minimum requirements of Public Law 86-272 (which I have found not to be the case), nevertheless Heublein would not be liable for South Carolina income taxes because the power of a state to tax may not

² The license tax must fall since it is predicated on liability for income tax.

be extended under the guise of the exercise of its police power.

The State's power under the twenty-first amendment to the United States Constitution is to regulate the liquor traffic. This power is not challenged by Heublein. However, the police power and the power to tax are two separate and distinct powers. This point was made quite clear in *Oklahoma Tax Comm'n. v. Brown-Forman Distillers Crp.*, 420 P. (2d) 894 (Okla. 1966). There is no substantial difference in the position taken by the Oklahoma Tax Commission in *Brown-Forman* (that simply because a corporation deals in alcoholic beverages the state can impose an income tax) and the position taken by the South Carolina Tax Commission in this case (that because a corporation deals in alcoholic beverages the state can make it do certain things and when it does those things the state can then subject it to an income tax). Neither the state nor its tax authorities may use the state's police power over the liquor traffic so as to subject a foreign corporation to a state income tax in circumstances where it would not otherwise be liable. Such would be a patent abuse of the state's police power.

I hold that following the regulations legally prescribed by the State for importing alcoholic beverages from without the State is but a step in the "shipment or delivery" of the goods referred to in Public Law 86-272; but, if such compliance be regarded as performance by Heublein of acts beyond the minimum requirements set up by Public Law 86-272, such acts are done under compulsion and cannot be invoked to subject Heublein to an income tax from which it otherwise is protected by the Act of Congress.

Accordingly, the Court hereby certifies of record, in accordance with § 65-2662, South Carolina Code of Laws, 192, that taxes in the amount of \$21,549.30 have been wrongfully collected from Heublein, Inc. by the South Carolina Tax Commission and ought to be refunded, to-

28 HEUBLEIN, INC., APPELLANT, v. S. C. TAX COMMISSION, APPELLEE

gether with interest at the legal rate from February 1, 1969.

And it is so Ordered.

JOHN GRIMBALL,
Resident Judge,
Fifth Judicial Circuit.

Columbia, South Carolina,
February 18, 1971.

APPENDIX C

**STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND.**

**BEFORE THE SOUTH CAROLINA TAX COMMISSION
IN RE:**

Heublein, Inc., a finding of whether the South Carolina Income of the corporation is excluded from taxation by Public Law 86-272, now codified as 15 U. S. C. A. 381, *et seq.*

The corporation, a "registered producer" as defined by Article 7, Chapter 1, Title 4 of the Code of Laws of South Carolina, has a resident registered representative and has likewise registered the brands of its products that are sold in South Carolina. The corporation sells alcoholic beverages to licensed wholesalers and the taxation of the income from such business is the subject involved herein.

The Corporation Income Tax Division has assessed a tax on such income and the corporation appears before us today in protest of the assessment, contending that the income is not subject to taxation because of Public Law 86-272. That law sets up certain activities that the corporation may do and not be subject to taxation; however, Article 7, Chapter 1, Title 4, requires the corporation, in order to legally sell its products to the wholesalers, to engage in activities in South Carolina that exceed the minimum as provided for by Public Law 86-272. The corporation, however, contends that the South Carolina statutes are regulatory and in no way affect the taxability of the income. The provisions of the Article were a part of the

general laws of the State prior to the enactment by the Federal Congress of Public Law 86-272. The corporation does not dispute the fact that it complies in every way with the requirements of the Article and thus engages in a legal business that would otherwise be illegal or prohibited.

Under such circumstances, the corporation's activities in South Carolina exceed the minimum requirements of Public Law 86-272 and the income therefore is taxable.

SOUTH CAROLINA TAX
COMMISSION,

/s/ROBERT C. WASSON,
Chairman.

Columbia, South Carolina,
January 2, 1969.

APPENDIX D

ART. I, § 8 CONSTITUTION OF THE UNITED STATES

§ 8. Powers of Congress.

The Congress shall have power . . .

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; . . .

And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

* * *

APPENDIX E

Constitution of the United States

ARTICLE XXI.

§ 1. National liquor prohibition repealed.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 2. Transportation of liquor into "dry" state.

The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3. Ratification within seven years.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

APPENDIX F

15 U. S. C. § 381. Imposition of net income tax—Minimum Standards

(a) No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

Domestic corporations; persons domiciled in or residents of a State

(b) The provisions of subsection (a) of this section shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to—.

(1) any corporation which is incorporated under the laws of such State; or

(2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.

Sales or solicitation of orders for sales by independent contractors

(c) For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, of tangible personal property.

Definitions

(d) For purposes of this section—

(1) the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of, tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities; and

(2) the term "representative" does not include an independent contractor.

Pub. L. 86-272, Title I, § 101, Sept. 14, 1959, 73 Stat. 555.

§ 382. Assessment of net income taxes; limitation; collection

(a) No State, or political subdivision thereof, shall have power to assess, after September 14, 1959, any net income tax which was imposed by such State or political subdivision, as the case may be, for any taxable year ending

on or before such date, on the income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after such date is prohibited by section 381 of this title.

(b) The provisions of subsection (a) of this section shall not be construed—

(1) to invalidate the collection, on or before September 14, 1959, of any net income tax imposed for a taxable year ending on or before such date, or

(2) to prohibit the collection, after September 14, 1959, of any net income tax which was assessed on or before such date for a taxable year ending on or before such date.

§ 383. Definition

For purposes of this chapter, the term "net income tax" means any tax imposed on, or measured by, net income.

§ 384. Separability provision

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

* * *

APPENDIX G

1

South Carolina Code of Laws (1962)

ARTICLE 7. Importation of Alcoholic Beverages.

§ 4-131. Definitions.—(1) The word "producer" as used in this chapter shall mean a manufacturer, distiller, rectifier, blender, or bottler of alcoholic liquors and shall include an importer of alcoholic liquors engaged in importing such alcoholic liquors into the United States.

(2) "Registered producer" shall mean a producer as herein defined who is registered with the South Carolina Tax Commission pursuant to this article.

(3) "Producer representative" shall mean a person who is a bona fide citizen of South Carolina and who maintains his principal place of abode in this State and who is registered with the South Carolina Tax Commission pursuant to this article as the South Carolina representative of a registered producer. (1958 (50) 1721.)

§ 4-132. Application of article.—The provisions of this article shall be applicable notwithstanding any other provision of law. (1958 (50) 1721.)

§ 4-133. Licensed manufacturers exempt.—Any manufacturer licensed under the provisions of this chapter shall be exempt from the provisions of this article. (1958 (50) 1721.)

§ 4-134. Only registered producers may import liquors.—No person other than a registered producer shall ship or move, or cause to be shipped or moved, any alcoholic liquors from a point outside South Carolina to a point within the geographic limits of South Carolina, and then only in accordance with the provisions of this article. (1958 (50) 1721.)

§ 4-135. Only registered brands may be imported.—No alcoholic liquors shall be shipped or moved into South Carolina unless and until each brand of such alcoholic liquors is duly registered with the South Carolina Tax Commission in accordance with the provisions of this article and regulations of the Tax Commission promulgated thereunder. (1958 (50) 1721.)

§ 4-136. Registration of producers; applications; fees; term.—Every producer shall apply to the Tax Commission on such forms as the Tax Commission may prescribe, for a certificate of registration, which certificate must be approved and issued prior to the shipment of any alcoholic liquors by the producer to a point within the geographic limits of South Carolina.

Every producer, at the same time application is made for a certificate of registration, shall remit to the Tax Commission a fee of one hundred dollars. Where a certificate is

applied for on or after January 1st, the fee shall be fifty dollars.

Every certificate of registration shall be valid from the date of issue until June 30, next succeeding. (1958 (50) 1721.)

§ 4-137. Registration of brands; applications; fee; term.—Every registered producer shall, prior to the shipment of any alcoholic liquors to a point within the geographic limits of South Carolina, obtain from the Tax Commission a certificate of registration for each and every brand of alcoholic liquors intended to be shipped to a point within the geographic limits of this State. The Tax Commission shall provide appropriate forms for application for certificate of registration of brands of alcoholic liquors.

At the same time that application for a certificate of registration of brands of alcoholic liquors is submitted, a fee of ten dollars shall be paid to the Tax Commission for each and every brand except the first five brands of a registered producer.

A certificate of registration of brands of alcoholic liquors shall be valid from the date of issue to June 30, next succeeding. (1958 (50) 1721.)

§ 4-138. Registration of producer representatives; applications; fee.—No person shall be qualified as a producer representative unless and until he has made application to the Tax Commission for a certificate of registration and such certificate shall have been approved and issued. The Tax Commission shall provide appropriate forms of application for a certificate of registration as a producer representative.

At the same time the application for a certificate of registration as a producer representative is submitted, a fee of twenty-five dollars shall be paid to the Tax Commission. (1958 (50) 1721.)

§ 4-139. Persons disqualified to be producer representatives.—No person having a direct or indirect interest in a wholesale or retail liquor business in South Carolina may qualify as a producer representative. (1958 (50) 1721.)

§ 4-140. Licensing of producers' warehouses; applications; fees; term.—A registered producer may store alcoholic liquors only in warehouse of such registered producer duly licensed by the Tax Commission. The Tax Commission shall require sufficient bond with respect to a licensed warehouse to insure proper handling of liquors stored therein. Section 4-9 shall be inapplicable with respect to warehouses licensed under the provisions of this article. Application for license to operate a warehouse shall be filed on such forms as the Tax Commission may prescribe.

At the same time application for a warehouse license is submitted, a fee of two hundred dollars shall be paid to the Tax Commission. Where application is made for a warehouse license on or after January 1st, the fee shall be one hundred dollars.

A warehouse license shall be valid from the date of issue until June 30, next succeeding. (1958) (50) 1721.)

§ 4-141. How shipments made; certificates of approval required.—Alcoholic liquors shall be shipped or moved from a point without South Carolina to a point within the geographic limits of South Carolina only by railroad companies, steamship companies, express companies, or truck companies, authorized to do business in South Carolina as common carriers by the South Carolina Public Service Commission. Such alcoholic liquors shall be shipped or moved only to the registered producer in care of the producer representative who is registered to handle the property of the registered producer originating the shipment. The shipment of alcoholic liquors shall be either stored in a duly licensed warehouse of the registered producer or, after delivery to the producer's representative is complete, may then be shipped by common carriers aforementioned, to a duly licensed wholesaler. Shipments of alcoholic liquors from a licensed producer's warehouse to a licensed South Carolina wholesaler may be made in a vehicle owned and operated by the wholesaler. Should alcoholic liquors be stored in the warehouse of a registered producer, or after delivery to the producer's representative is complete, they may be shipped to a duly licensed wholesaler or to a point

36 HEUBLEIN, INC., APPELLANT, v. S. C. TAX COMMISSION, APPELLEE

without South Carolina. Prior to any such shipment or transfer, the producer's representative shall apply to the Tax Commission, on forms prescribed by the Tax Commission, for permission to ship or transfer such alcoholic liquors, and the producer's representative shall have received a certificate of approval of such shipment or transfer. (1958 (50) 1721.)

§ 4-142. Producers importing to send Commission invoices and bills of lading; representatives to acknowledge delivery.—Prior to shipment into the geographic boundaries of South Carolina, the registered producer shall mail to the Tax Commission by first-class mail a correct and complete invoice, showing in detail the items in such shipment by quantity, type, brand, size, price, and the point of origin, and the point of destination. Also prior to or at the time of shipment, a copy of the bill of lading shall be forwarded to the Tax Commission by first-class mail. Immediately upon acceptance of delivery of the shipment by the producer's representative, the producer's representative shall furnish the Tax Commission with a copy of the invoice covering the shipment with endorsement thereon showing the date, time, and place delivery was accepted. (1958 (50) 1721.)

§ 4-143. Producer representatives to send invoices on shipments and bills of lading on exports.—Prior to shipment to any South Carolina wholesaler or to any point without the State of South Carolina, the producer's representative shall mail to the Tax Commission a correct and complete copy of the invoice covering the shipment, showing the name and address of the consignee and, in detail, the items in such shipment by quantity, type, brand, size, and price. On all shipments to a point without South Carolina, the producer's representative shall at the time of shipment mail to the Tax Commission a copy of the bill of lading. (1958 (50) 1721.)

§ 4-144. Seizure and sale of liquor illegally shipped.—Any alcoholic liquors shipped or moved into the geographic limits of South Carolina in violation of any provision of this article, are hereby declared contraband and may be seized and sold as provided by § 4-111.1. (1958 (50) 1721.)

§ 4-145. Issuance or rejection of applications.—The Tax Commission, in its discretion, upon due consideration of the information contained in applications for certificates and licenses provided for in this article, shall issue or reject the certificate or license applied for. (1958 (50) 1721.)

§ 4-146. Suspension or revocation of registrations or licenses.—Any and all certificates of registration or licenses provided by this article may be suspended or revoked by the Tax Commission upon a showing of any violation of law or of any regulation of the Tax Commission. (1958 (50) 1721.)

§ 4-147. Applicants to certify right to examine records.—In all cases the applicant for a certificate or license required by this article, as a condition precedent to the issue of such certificate or license, must certify that the Tax Commission shall have the right within statutory limitations to audit and examine the books and records, papers and memoranda of the applicant, with respect to the administration and enforcement of laws administered by the Tax Commission. (1958 (50) 1721.)

§ 4-148. Enforcement of article.—The Tax Commission shall administer and enforce the provisions of this article. (1958 (50) 1721.)

§ 4-149. Rules and regulations.—The Tax Commission shall have the power to make such rules and regulations not inconsistent with law deemed necessary for the proper administration and enforcement of this article. Such rules and regulations shall have the full force and effect of law. (1958 (50) 1721.)

§ 4-150. Deposit of receipts.—All moneys received by the Tax Commission under the provisions of this article shall be deposited with the State Treasurer to the credit of the general fund of the State. (1958 (50) 1721.)

APPENDIX G

2

South Carolina Code of Laws (1962) (as amended)

* * *

§ 4-137.1. Producers to file affirmation that brands will sold to State wholesalers in parity with lowest nationwide price schedule.—Every registered producer of alcoholic liquors shall, at the time of application for registration in this State, file with the Tax Commission an affirmation of corporate policy with regard to sales of all brands owned, controlled, sold, offered for sale, franchised or distributed by such producer in this State. The affirmation shall certify that the producer shall not wilfully sell or offer for sale any alcoholic liquors of a particular brand and proof in any State in the United States at a price lower than the price such liquors are sold or offered for sale to licensed South Carolina wholesalers.

"Price" as used in this section shall mean platform price at the distillery and shall not include price differentials based on transportation costs, containers or other costs not directly related to the quality and proof of the product concerned. Quantity discount prices for liquors sold to monopoly states or elsewhere shall not be considered to be violations of the producer's affirmation if such discount prices are also offered to South Carolina wholesalers for purchases in the same quantities.

Any registered producer who fails to file such affirmation or wilfully violates the pledges contained therein shall have its registration and privileges to import and sell alcoholic liquors in the State refused, cancelled or suspended at the discretion of the Tax Commission for such periods as the Commission may deem necessary and proper.

Any producer may appeal a judgment of the Tax Commission to the circuit court of Richland County. (1967 (55) 889.)

§ 4-140. Licensing of producers' warehouses; applications; fees; term.—A registered producer may store alcoholic liquors only in a warehouse of such registered producer duly licensed by the Tax Commission. The Tax

Commission shall require sufficient bond with respect to a licensed warehouse to insure proper handling of liquors stored therein. Application for license to operate a warehouse shall be filed on such forms as the Tax Commission may prescribe.

At the same time application for a warehouse license is submitted, a fee of two hundred dollars shall be paid to the Tax Commission. Where application is made for a warehouse license on or after January first, the fee shall be one hundred dollars.

A warehouse license shall be valid from the date of issue until June thirtieth, next succeeding. (1958 (50) 1721; 1967 (55) 562.)

* * *

§ 4-141. How shipments made; certificates of approval required.—Alcoholic liquors shall be shipped or moved from a point without South Carolina to a point within the geographic limits of South Carolina only by railroad companies, steamship companies, express companies, or truck companies, authorized to do business in South Carolina as common carriers by the South Carolina Public Service Commission or by wholesalers licensed by the South Carolina Tax Commission. Such alcoholic liquors shall be shipped or moved only to the registered producer in care of the producer representative who is registered to handle the property of the registered producer originating the shipment. The shipment of alcoholic liquors shall be either stored in a duly licensed warehouse of the registered producer or, after delivery to the producer's representative is complete, may then be shipped by common carriers aforementioned or by wholesalers licensed by the South Carolina Tax Commission, to a duly licensed wholesaler. Shipments of alcoholic liquors from a licensed producer's warehouse to a licensed South Carolina wholesaler may be made in a vehicle owned or operated by the wholesaler. Should alcoholic liquors be stored in the warehouse of a registered producer, or after delivery to the producer's representative is complete, they may be shipped to a duly licensed wholesaler or to a point without South Carolina. Prior to any such shipment or transfer, the producer's representative shall apply to the Tax Commission, on

forms prescribed by the Tax Commission, for permission to ship or transfer such alcoholic liquors, and the producer's representative shall have received a certificate of approval of such shipment or transfer. (1958 (50) 1721; 1963 (53) 488.)

* * *

APPENDIX H

1

§ 65-222. Tax on corporations.—Every corporation organized under the laws of this State, whose entire business is transacted or conducted within this State, shall make a return and shall pay annually an income tax equivalent to five per cent of the entire net income received by such corporation during the income tax year, and except as otherwise provided, every corporation organized under the laws of this State, doing or transacting business partly within and partly without this State, shall make a return and shall pay annually an income tax equivalent to five per cent of a proportion of its entire net income, to be determined as provided in this chapter, and except as otherwise provided, every foreign corporation transacting, conducting, doing business or having an income within the jurisdiction of this State, whether or not such corporation be engaged in or the income derived from intrastate, interstate, or foreign commerce, shall make a return and shall pay annually an income tax equivalent to five per cent of a proportion of its entire net income, to be determined as provided in this chapter. The terms "*transacting*," "*conducting*," or "*doing business*," as used in this section shall include the engaging in or the transacting of any activity in this State for the purpose of financial profit or gain.

* * *

APPENDIX H

2

§ 65-602. Annual reports to be filed by corporations and cooperatives; exemption of cooperatives from tax.—Every corporation organized under the laws of South Caro-

lina to do business for profit and every corporation organized to do business under the laws of any other state, territory or country and qualified to do business in South Carolina and any other corporation required by § 65-222 to file income tax returns shall, in addition to any and all other requirements of law, make a report annually to the Tax Commission on or before the fifteenth day of the third month next after the preceding income year in such form as may be prescribed by the Tax Commission containing such information and facts as the Commission may require for the administration of the provisions of this chapter.

Cooperative organizations and corporations organized under chapters 14, 15 or 16 of Title 12 shall file reports required by this section, but shall be exempt from the tax levied in § 65-606.

* * *

APPENDIX H

3

§ 65-606. License tax imposed on corporations generally; rate; when payable.—In addition to any and all other license taxes or fees or taxes of whatever kind, every corporation required to file a report by § 65-602, except such corporations as are enumerated in § 65-608, shall pay to the Commission, at the time of filing the report required by § 65-602, an annual license fee of one mill upon each dollar paid to the capital stock and paid in as surplus of said corporation as shown by the records of the corporation on the first day of the income year next preceding the date of filing the report. In no case shall the license fee provided for this section be less than ten dollars. The license fee provided for by this section shall be paid at the time of filing the report pursuant to the provisions of § 65-602, on or before the fifteenth day of the third month next after the preceding income year.

* * *

APPENDIX I

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Opinion No. 19289

HEUBLEIN, INC.,

v.

SOUTH CAROLINA TAX COMMISSION

**NOTICE OF APPEAL TO THE SUPREME COURT OF
THE UNITED STATES**

Notice is hereby given that Heublein, Inc. hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of South Carolina, which held that Heublein, Inc. was responsible for State of South Carolina income taxes, entered in this action on September 22, 1971, Petition for Rehearing denied October 11, 1971.

This appeal is taken pursuant to 28 U. S. C. § 1257 (2).

W. Croft Jennings, Jr.,
Counsel for Heublein, Inc.

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing notice of appeal has been mailed to the Honorable Daniel R. McLeod, Attorney General of the State of South Carolina, at Post Office Box 11549, and Joe L. Allen, Jr. Esquire and G. Lewis Argoe, Jr., Esquire, Assistant Attorneys General, at Post Office Box 125, Columbia, South Carolina 29202, this 30th day of December, 1971. I further certify that all parties required to be served have been served.

W. Croft Jennings, Jr.,
Counsel for Heublein, Inc.